

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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KENNETH R. SPLOND,

Plaintiff,

v.

MORAN, *et al.*,

Defendants.

Case No. 2:23-cv-01391-RFB-DJA

ORDER

Plaintiff Kenneth R. Splond brings this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while incarcerated at Southern Desert Correctional Center. ECF No. 1. On September 11, 2023, this Court ordered Mr. Splond to file a fully complete application to proceed in forma pauperis or pay the full \$402 filing fee on or before November 10, 2023. ECF No. 7. The Court warned Mr. Splond that the action could be dismissed if he failed to file a fully complete application to proceed in forma pauperis with all three documents or pay the full \$402 filing fee for a civil action by that deadline. *Id.* at 2. That deadline expired and Mr. Splond did not file a fully complete application to proceed in forma pauperis, pay the full \$402 filing fee, or otherwise respond.

I. DISCUSSION

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. Thompson v. Hous. Auth. of City of Los Angeles, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court order or comply with local rules. See Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); Malone v. U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order). In

1 determining whether to dismiss an action on one of these grounds, the Court must consider: (1)
2 the public's interest in expeditious resolution of litigation; (2) the Court's need to manage its
3 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of
4 cases on their merits; and (5) the availability of less drastic alternatives. See In re
5 Phenylpropanolamine Prod. Liab. Litig., 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting Malone v.
6 U.S. Postal Serv., 833 F.2d 128, 130 (9th Cir. 1987)).

7 The first two factors, the public's interest in expeditiously resolving this litigation and the
8 Court's interest in managing its docket, weigh in favor of dismissal of Mr. Splond's claims. The
9 third factor, risk of prejudice to defendants, also weighs in favor of dismissal because a
10 presumption of injury arises from the occurrence of unreasonable delay in filing a pleading ordered
11 by the court or prosecuting an action. See Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976).
12 The fourth factor—the public policy favoring disposition of cases on their merits—is greatly
13 outweighed by the factors favoring dismissal.

14 The fifth factor requires the Court to consider whether less drastic alternatives can be used
15 to correct the party's failure that brought about the Court's need to consider dismissal. See Yourish
16 v. Cal. Amplifier, 191 F.3d 983, 992 (9th Cir. 1999) (explaining that considering less drastic
17 alternatives *before* the party has disobeyed a court order does not satisfy this factor); accord
18 Pagtalunan v. Galaza, 291 F.3d 639, 643 & n.4 (9th Cir. 2002) (explaining that “the persuasive
19 force of” earlier Ninth Circuit cases that “implicitly accepted pursuit of less drastic alternatives
20 prior to disobedience of the court's order as satisfying this element[,]” *i.e.*, like the “initial granting
21 of leave to amend coupled with the warning of dismissal for failure to comply[,]” have been
22 “eroded” by Yourish). Courts “need not exhaust every sanction short of dismissal before finally
23 dismissing a case, but must explore possible and meaningful alternatives.” Henderson v. Duncan,
24 779 F.2d 1421, 1424 (9th Cir. 1986). Because this action cannot realistically proceed until and
25 unless Mr. Splond either files a fully complete application to proceed in forma pauperis or pays
26 the \$402 filing fee for a civil action, the only alternative is to enter a second order setting another
27 deadline. There is no indication that Mr. Splond needs additional time or evidence that he did not
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1 receive the Court's order. Setting another deadline is not a meaningful alternative given these
2 circumstances. So the fifth factor favors dismissal.

3 **II. CONCLUSION**

4 Having thoroughly considered these dismissal factors, the Court finds that they weigh in
5 favor of dismissal.

6 **IT IS THEREFORE ORDERED** that this action is dismissed without prejudice based on
7 Mr. Splond's failure to file a fully complete application to proceed in forma pauperis or pay the
8 full \$402 filing fee in compliance with this Court's September 11, 2023, order. The Clerk of Court
9 is directed to enter judgment accordingly and close this case. No other documents may be filed in
10 this now-closed case. If Mr. Splond wishes to pursue his claims, he must file a complaint in a new
11 case.

12 **IT IS FURTHER ORDERED** that Mr. Splond's incomplete application to proceed *in*
13 *forma pauperis* (ECF No. 2) is DENIED as moot.

14 **IT IS FURTHER ORDERED** that Mr. Splond may move to reopen this case and vacate
15 the judgment by filing a motion for reconsideration of this order. In this motion, Mr. Splond is
16 required to explain what circumstances delayed him from paying the filing fee or filing the
17 application to proceed in forma pauperis. If the Court finds there to be good cause or a reasonable
18 explanation therein, the Court will reopen the case and vacate the judgment.

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20 **DATED:** April 16, 2024

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24 **RICHARD F. BOULWARE, II**
25 **UNITED STATES DISTRICT JUDGE**
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